

April 30, 2019

**Ex Parte via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;  
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with  
Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch,

On April 29, 2019, Lance Pickett, Isaac Roach, Kerry Brown and Michael Maddix of Sorenson Communications, LLC (“Sorenson”), and Mary Huang and I, outside counsel to Sorenson, met separately with Michael Carowitz, Special Counsel to Chairman Pai, Robert Aldrich of the Commission’s Consumer and Governmental Affairs Bureau, and Will Holloway, Intern in the Office of Chairman Pai; Jamie Susskind, Chief of Staff to Commissioner Carr; Michael Scurato, Acting Legal Advisor for Media and Consumer Protection to Commissioner Starks; and Patrick Webre, Barbara Esbin, Robert Aldrich, Eliot Greenwald, and Michael Scott of the Commission’s Consumer and Governmental Affairs Bureau and Andrew Mulitz of the Office of the Managing Director. On April 30, Mr. Roach, Mr. Brown, Ms. Huang, and I met with Arielle Roth, Wireline Legal Advisor to Commissioner O’Reilly. We were rejoined by Mr. Pickett and Mr. Maddix to meet with Travis Litman, Chief of Staff to Commissioner Rosenworcel. In all meetings, we addressed the draft Order and Further Notice of Proposed Rulemaking currently scheduled for consideration at the Commission’s May 9, 2019 Open Meeting. The draft order and further notice addressing VRS provide much-needed clarity and updates on a variety of topics.<sup>1</sup> Some aspects of the *Draft Order*, however, could benefit from additional clarity and consideration of how best to implement the Commission’s objectives. With respect to each issue raised below, Sorenson offers proposed solutions to address the Commission’s objectives, a short summary of which are provided in Attachment A. We provided these proposed solutions as well as the handout included as Attachment B to the staff.

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<sup>1</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Draft Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC1905-07, CG Docket Nos. 10-51 and 03-123, ¶ 20 (rel. Apr. 18, 2019) (amending 47 C.F.R. § 64.615(a)(1)-(2)) (“*Draft 2019 VRS Improvement Order*” or “*Draft Order*”).

1. Enterprise and Public Videophone Registration

The *Draft Order* would require VRS providers to register enterprise and public videophones.<sup>2</sup> Sorenson supports reasonable registration requirements. We are concerned, however, that the requirements as drafted are unworkable and threaten to reduce availability of VRS and functional equivalence. But we believe that they can be easily remedied without exposing the TRS Fund to waste, fraud or abuse.

Enterprise videophones are available today in a variety of settings. Businesses, schools, government agencies, and others work to provide equivalent access and accommodation for their Deaf staff, students, patients, and clients. Some of those videophones might be assigned to a single Deaf employee; others may be at workstations or reception desks for use by multiple people, such as the staff of a customer service department or a reception desk with rotating coverage. Others could be available to a larger, but still limited, group of users, such as videophones placed in college dormitory common areas or hospital rooms. Others might be used by ASL-fluent hearing employees to assist Deaf customers (with direct video support) or clients as they interact with support agencies, healthcare providers, or the government.

For all these varied situations, the *Draft Order* would require providers to obtain certification from the person “responsible for ensuring compliant use of the videophone” a signed certification that includes, among others, a statement that the individual responsible for that videophone “will make reasonable efforts to ensure that only registered VRS users are permitted to use the phone for VRS calls.”<sup>3</sup> The *Draft Order* suggests that “reasonable efforts” are “maintaining a list of users, requiring such individuals to provide proof of registration when requesting to use a videophone, and maintaining a copy of the user’s request.”<sup>4</sup>

In many settings, these requirements will simply not be achievable and will deny service to eligible individuals. Not all VRS users are “registered” because some VRS users principally utilize videophones registered to family members (e.g. a head of household). The VRS rules have never been applied in a manner that required that every Deaf person in a family be registered independently, and the TRS Administrator explicitly allows a single user to register a “family/shared/joint” account for use by all family members.<sup>5</sup> Students (such as dormitory residents and interns), children, spouses of registered users, and roommates of registered users may not themselves be registered in the URD but rely instead on a parent’s, spouse’s, partner’s or roommate’s registration. In fact, the TRS Administrator currently does not contain the names

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<sup>2</sup> See *Draft Order* ¶¶ 26-28.

<sup>3</sup> *Id.* ¶¶ 26, 27.

<sup>4</sup> *Id.* ¶ 27 n.93.

<sup>5</sup> RolkaLoube, *Internet Telecommunications Relay Services Video Relay Service Registration Database Filing Instructions* at 13 (Table 5) (permitting a “Family/Shared/Joint” account and requiring registration information only for “the primary VRS user”).

of minors, just the names of their guardians.<sup>6</sup> The *Draft Order*'s certification requirement would deny all these eligible individuals access to VRS in enterprise settings. The approach taken in the *Draft Order* also violates functional equivalency—no hearing student, patient, or employee must provide “registration” in order to make a phone call.

The proposed requirement for enterprises to certify that all users of a videophone are registered VRS users will discourage entities from making this critical accommodation available—which discourages compliance with the ADA's reasonable accommodation requirements. For example, for a videophone available in a common workroom or reception desk where multiple users have access, the responsible individual would need to monitor the phone at all times to ensure that only VRS-registered users place VRS calls, even though the purpose of the videophone is to support customer service or accept incoming calls from the public. Likewise, in the common room of a dormitory, where the users are likely to be one of many dormitory residents, the responsible individual would have to monitor the videophone 24 hours a day to ensure that only VRS-registered users place VRS calls. The *FNPRM* seeks comment on an individual log-in requirement, but the Commission should not prejudge the outcome of that rulemaking by instituting a certification requirement that appears to contemplate individual log-in.

The Commission needs to consider the consequences of the enterprise videophone entity certification requirement. In healthcare settings, requiring users to identify themselves to a videophone administrator could implicate HIPAA and other healthcare privacy requirements. For example, a list of patients who used a clinic's enterprise videophone would, in most instances, qualify as protected health information. Such a list could be subject to specific security standards, and clinics could have to provide patients with privacy disclosures before adding patient names to such a list. Similarly, in the mental health and substance abuse contexts, healthcare providers could be legally prohibited from releasing information about patients who used an enterprise videophone. Additionally, requiring minors to identify themselves to a videophone administrator could implicate COPPA requirements, adding to the legal restrictions and compliance burdens faced by schools and similar entities when maintaining or disclosing user data. Students, including those at institutions dedicated to their education like Gallaudet University or deaf-focused primary and secondary schools, may also find themselves without access to VRS at their institution's non-public videophones because they cannot provide their own “registration.” Similarly, homeless individuals seeking assistance at shelters and other support entities are also likely to be unregistered because of the lack of a fixed residence, and thus would be locked out of VRS communication when in a non-public area of an enterprise. Indeed, these entities themselves may find themselves unable provide the certifications because they cannot commit to the necessary monitoring and control, leaving them without enterprise videophones capable of VRS calls.

Sorenson respectfully suggests that a more practical requirement would be for the responsible individual to “make reasonable efforts to ensure that only deaf or speech-impaired individuals who need VRS are permitted to use the phone for VRS calls.” This simple

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<sup>6</sup> *Id.* (Minor Registrations).

requirement tracks the fundamental criteria for VRS eligibility.<sup>7</sup> In all events, the fact that the user must be an ASL-speaker to place a video call reduces the likelihood of any improper use of VRS; in this era of mobile phones and any-distance calling, plus smartphone video calling apps like FaceTime, there is no reason why an ASL-fluent hearing person would use VRS to place a call to another hearing person—and in any event Video Interpreters can usually detect when a person is not Deaf.

Sorenson also notes a few places where the registration requirements could be clarified or improved:

First, the *Draft Order* (at ¶ 27) would require the VRS provider to identify the specific “type of area” where the videophone is located within the host organization.<sup>8</sup> Footnote 94 calls out a proposal that Sorenson filed<sup>9</sup> (provided as Attachment C) for how such areas might be classified. If the Commission intends that the classification categories Sorenson proposed would satisfy the new requirement, the Commission should make that clear in the order. This level of specificity tracks settings with different types of supervision. Requiring more data would necessitate a longer period to register enterprise and public phones, as providers will need to undertake additional data collection (which the Commission will also have to justify under the Paperwork Reduction Act).

Second, the *Draft Order* (at ¶ 30) would require VRS providers “to monitor enterprise and public videophone usage and to report any unusual activity to the TRS Fund administrator.”<sup>10</sup> The examples of “unusual activity” cover changes that may not actually be unusual. For example, footnote 104 suggests that “a substantial increase in call volume over multiple days” should be reported. But this type of change in calling patterns is relatively common. VRS traffic to the Internal Revenue Service picks up every April; “repetitive calls to a single telephone number” might reflect a clinic’s efforts to get in touch with a patient or a hopeful student’s attempts to be in touch with admissions before an application deadline. A hospital would likely only have usage when it has a Deaf patient. The conference center at Gallaudet will likely have usage spikes when it has a large, Deaf-centric event. It is not clear what VRS Providers are expected to do and whether they can exercise judgment as to whether activity is “unusual” or not. Even more fundamentally, providers do not know what are ordinary business hours, or when to expect activity outside of those hours. The Commission should move this topic to the FNPRM to collect more detailed information to clarify its goals and how this can best be implemented to be actually useful.

Third, the *Draft Order* does not address “hearing” enterprise phones. The Commission should clarify that no certification of use by Deaf individuals is required for these phones

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<sup>7</sup> See 47 C.F.R. § 64.611(a)(3)(ii).

<sup>8</sup> *Draft Order* ¶ 27; *id.* ¶ 27 n.94.

<sup>9</sup> See Letter from Mark D. Davis, Counsel for Sorenson Communications, LLC, to Marlene Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 10-51 (filed Mar. 25, 2019) (attaching Proposed Customer Classification Table)

<sup>10</sup> *Id.* ¶ 30.

because they cannot be used to place VRS calls. A videophone used by ASL-speaking hearing individuals at enterprises is already permitted under existing rules and enables the Commission's goal of providing direct video support.

Finally, the Commission should reconsider the deadline for compliance once it has decided on the final requirements. Depending on what requirements the Commission finally adopts, 120 days may not be enough. Sorenson has tens of thousands of videophones at thousands of different enterprises. Sorenson will be required to get new agreements and certifications from each of these entities, which will take time, particularly with the school year coming to a close. Sorenson encourages the Commission to consider a longer implementation period, such as six months.

## 2. Direct Video Calling.

Sorenson supports the Commission's efforts to enable Direct Video Calling ("DVC") and has no objection to permitting providers of DVC to access the TRS Numbering Directory or to put dedicated DVC numbers into the Directory.<sup>11</sup> Indeed, Sorenson already offers analogous functionality through many thousands of enterprise accounts, which allow businesses to accept incoming point-to-point calls for their clients, staff, and customers.

However, there are a number of unresolved technical issues with call transfers and allowing providers to put a voice customer-service number in the TRS Numbering Directory (*i.e.*, a "single unified customer support number"). Accordingly, Sorenson requests that the Commission move Paragraphs 18 and 19 of the *Draft Order* to the FNPRM and seek comment about how to resolve those issues.

The technical issues arise with implementing Paragraphs 18 and 19 of the *Draft Order*. These paragraphs contemplate that if a company places its primary customer-service telephone number in the TRS Numbering Directory, a Deaf user will still have the option to reach that number by VRS, either at the outset of the call or through a subsequent transfer. But as explained below, offering customers this choice would require several technical changes, including changes to the TRS Numbering Directory, ACQ, URD and the US VRS Provider Interoperability Profile.

First, the *Draft Order* (at ¶ 18) provides no mechanism for a VRS provider to be able to distinguish between a single unified customer support number that can receive both direct video and VRS (as well as hearing) calls, and other numbers in the TRS Numbering Directory. This is necessary in order for a Deaf individual to have the ability to choose between direct video and VRS for a particular call to the single unified customer support number, as envisioned by ¶ 18. Ordinarily, providers are prohibited from processing VRS calls, and from seeking compensation, for calls to numbers in the TRS Numbering Directory; today these must be connected as point-to-point calls. The *Draft Order* would require providers to make an exception for single unified

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<sup>11</sup> Sorenson notes that it owns a number of patents related to direct video calling, including US9571788B2 - Communication systems, communication devices, and related methods for routing calls between communication devices having users with different abilities.

customer support numbers, such as the toll-free number for the Social Security Administration, when the caller elects to use VRS. But the *Draft Order* provides no mechanism to distinguish these numbers from all the other numbers in the Numbering Directory, and no such mechanism exists today. Today, a VRS provider has no way of knowing when it should offer a consumer the choice to complete a VRS call to a particular number listed in the Numbering Directory. Changes will also be necessary to the All Call Query (“ACQ”) and the URD. Otherwise, the TRS Fund Administrator will also have no way to determine when such a call is compensable.

Second, Paragraph 19 of the *Draft Order* would require DVC providers to be able to transfer a DVC call to a hearing person (*i.e.*, manager) and convert the call to a VRS call. The *Draft Order* states that the SIP Transfer procedure provides a “framework” for accomplishing this. But the VRS Provider Interoperability Profile (which is incorporated into the Commission’s rules) currently *prohibits* the use of this transfer procedure (called a REFER) across the provider interface, which would be necessary to accomplish such a transfer. See VRS Provider Interoperability Profile § 9.2.5. This was put in place because there was no clear compensation filing instructions for calls that may be transferred multiple times between VRS and point-to-point users. In addition, implementing such a transfer process would require VRS and DVC providers to agree on types of transfers (*e.g.*, cold, tepid, warm, hot), what protocols to use, and call flows for each different type. Each is an important variation with differing complexity. This revision to the Provider Interoperability Profile could be incorporated into the existing work that VRS providers have undertaken to update that Profile. Creating a transfer capability will also require the TRS Fund Administrator to develop a mechanism (and modify its billing instructions) to permit providers to report calls that have been transferred to VRS. It is premature to permit single unified customer support numbers in the TRS Numbering Directory, or to establish a transfer requirement, before these details are finalized. These details can and should be resolved so that a Deaf caller does not have to place separate calls, one for direct video and one for VRS, but that is not the current reality.

Finally, the *Draft Order* does not expressly require DVC providers to honor a customer’s choice of VRS provider when transferring a DVC call to VRS. It should. A customer should not lose the ability to select his or her VRS provider just because an entity has chosen to put its customer-service telephone number in the TRS Numbering Directory.

Accordingly, the Commission should move Paragraphs 18 and 19 to the FNPRM and seek comment on what changes are needed to the TRS Numbering Directory and any other systems to allow for consumers to be able to choose between DVC and VRS when calling a single unified customer support number. In addition, the Commission should seek comment on what, if any, changes to standards are necessary to implement transfers of direct video calls to VRS during a call. Alternatively, the Commission could make this effective 180 days after the Bureau issues a Public Notice declaring that all changes have been made to industry standards, TRS Numbering Directory, ACQ, the URD, and the US VRS Provider Interoperability Profile, and that such changes have been fully tested. In the event the Commission follows this latter path, it still would need to adopt a rule requiring DVC providers to honor a consumer’s choice of VRS provider when transferring calls from DVC to VRS.

3. Non-Service-Related Inducements.

Sorenson appreciates the Commission's clarification on non-service-related inducements. This has been a point of uncertainty for some time. The *Draft Order* does not, however, address the category of inducements that have been commonly offered recently by some providers—devices such as iPads and tablets, laptops, and streaming media players with video game system capabilities like the NVIDIA SHIELD.<sup>12</sup> These devices can be used for VRS and point-to-point calls but that is not their only function.

The broad range of uses of these devices extends far beyond those of television monitors, and thus makes it unclear whether the Commission would consider them to be “non-service related” and therefore not acceptable. It also remains unclear whether a such a device would become “service-related” if it is altered to limit its functionality to VRS and point-to-point calls and some necessary ancillary functions such as email and internet browsing but locked out the ability to add other applications. (Email and internet browsing allow a user to communicate with its VRS provider, and also to reach its provider's website, which contains information such as outage notifications.) The Commission should resolve these issues in the pending order to end the uncertainties that providers have expressed for years on this topic.

Addressing these questions now would also provide guidance that is available to all the VRS competitors simultaneously, creating a more level playing field. The *Draft Order* suggests that providers can seek guidance on questions about the acceptability of certain inducements,<sup>13</sup> but this presents two problems. First, providers planning a marketing campaign will no doubt seek confidentiality for their guidance requests. Yet other providers also need timely information about which types of equipment are considered service-related or non-service related. Resolving questions about current device offerings here avoids these problems and provides clear rules-of-the-road fairly and timely to all providers. Second, the Commission has no history of being able to provide timely responses to requests for guidance. For future equipment, the Commission should establish a 30-day shot clock on guidance requests and make public any guidance once the provider's promotion begins (at which point it will no longer be confidential). Otherwise, the prospect of advance guidance is simply a mirage.

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<sup>12</sup> Sorenson does not provide the NVIDIA SHIELD to its users. However, ZVRS does. *See, e.g., ZVRS, Can I Buy My Own Game Controller and Use It on the OneVP*, YOUTUBE (Apr. 17, 2019), <https://youtu.be/X3wHI2fuLu0> (video tutorial by ZVRS explaining that users can buy an NVIDIA game controller for use on their OneVP). For further explanation of the NVIDIA SHIELD, *see Overview*, NVIDIA, <https://www.nvidia.com/en-us/shield/> (last visited Apr. 29, 2019) (marketing NVIDIA SHIELD as a streamer, game console, DVR, media server, and smart home hub with voice assistants); *Games*, NVIDIA, <https://www.nvidia.com/en-sg/shield/games/> (last visited Apr. 29, 2019) (explaining NVIDIA Gamestream technology); *Legal Notices*, NVIDIA, <https://www.nvidia.com/en-us/about-nvidia/legal-info/> (last visited Apr. 29, 2019).

<sup>13</sup> *See id.* ¶ 34 & n.124.

Sorenson also raises concern about language in Paragraph 35 that providers may not provide no or minimal charge equipment to “select users” “based on their actual or expected volume of VRS minutes.”<sup>14</sup> The last sentence of Paragraph 35 goes further to state that “absent a clear justification, e.g., based on the nature of a particular person’s disability, providing equipment at no or minimal charge to select individuals, whether or not service-related, is likely to be found to violate the rule against practices that cause or encourage the making of VRS calls that would not otherwise be made.”<sup>15</sup>

These statements sweep too broadly, ignoring legitimate reasons necessitating selection. For example, a person whose life necessitates mobility will need equipment that allows VRS to be used while moving from place to place. When conducting a beta test, providers need users who will actually test the features and functionalities being introduced, which requires higher volume users. When introducing a new videophone, it is not possible to provide the new phone to every user at once. Providers need to be able to prioritize, whether geographically, or by age of equipment, or first-in-time requests. A consumer may have specific needs that require addressing, such as an inadequate home internet infrastructure or higher resolution on their monitor in order to be able to better comprehend the conversation.

Furthermore, usage also corresponds with a consumer’s need for VRS. Requiring a provider to never take account of historical or anticipated usage in any way mandates ignoring need. In addition, the Commission values competition in VRS, and in a competitive market, providers are going to seek to serve the consumers that most need VRS, and to win them from other providers, as well as to convince existing customers to stay. Those high need consumers will correlate with usage to some degree.

While Paragraph 35 as written is overbroad and does not provide meaningful guidance as to how providers can market service and necessary equipment in a competitive market, there are meaningful rules the Commission could adopt (or reiterate, as the case may be):

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<sup>14</sup> See *id.* ¶ 35.

<sup>15</sup> See *id.*



- The offer or possession of no or reduced charge equipment<sup>16</sup> cannot be tied to maintaining any level of VRS usage, or to placing any amount of additional VRS calls.<sup>17</sup>
- The offer or possession of no or reduced charge equipment cannot be tied to remaining a default user of the VRS provider offering or providing that equipment, or having been a default user for a specified period (e.g., you can have another piece of equipment if you remain a default user for another three or six months).<sup>18</sup>
- A VRS provider cannot require return of no or reduced charge equipment if the user ceases to be a default user.<sup>19</sup>

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<sup>16</sup> We use equipment here, but the same could also be applied to credits towards a subsidy for a user's internet access costs. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd. 1466, 1466-67 ¶ 1 (Cons. & Govt'l Affs. Bur. 2005) (holding "that any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS Call . . . is inconsistent with Section 225 of the Communications Act of 1934 and the TRS regulations") (footnote omitted); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 20 FCC Rcd. 12,503, 12,503 ¶ 1, 12,505 ¶ 5 (Cons. & Govt'l Affs. Bur. 2005) (finding that a financial reward in the form of "free or heavily discounted long distance service" incentivizes users to make "more or longer calls" using TRS than they otherwise would in violation of Section 225).

<sup>17</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20,140, 20,175 ¶ 94 (2007) ("Providers that give consumers relay equipment cannot condition the ongoing use or possession of the equipment, or the receipt of different or upgraded equipment, on the consumer making relay calls through its service or the service of any other provider. In other words, providers cannot give consumers equipment as part of outreach efforts or for other purposes, and then require that the equipment be relinquished if the consumer fails to maintain a certain call volume.").

<sup>18</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 810 ¶ 38 (2008) (requiring providers to make clear in consumer education and outreach materials that "the provider cannot condition the ongoing use or possession of equipment or the receipt of different or upgraded equipment on the consumer continuing to use the provider as its default provider") (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 11,591, 11,622 ¶¶ 87-90 (2008)).

<sup>19</sup> See *id.*

- A VRS provider cannot condition the offer or possession of no or reduced charge equipment on a user porting specific numbers specified by the VRS provider (as distinguished from numbers freely chosen by the user).
- A VRS provider cannot request proof or documentation of a user's VRS call history as a condition of offering or providing no or reduced charge equipment.
- When a VRS provider offers a user no or reduced charge equipment, that equipment must be reasonably related to the user's need for and ability to communicate using VRS, or, in the case of product testing, the provider's need to evaluate the features or functions being tested.

These rules, together with a Commission decision as to whether and when tablets, laptops, and video servers can qualify as "service-related," would go a long way to providing actionable and enforceable guidance to all parties, providers and consumers, as to which conduct is categorically prohibited, and require a reasonable relationship to the purpose of VRS, and continued innovation, for all other practices involving no or reduced charge equipment.

#### 4. All Call Query

The *Draft Order* would require VRS providers to validate the eligibility of the party on the video side of a VRS call, and the registration of an enterprise or public videophone used for a VRS call, by querying either the TRS Numbering Directory or the URD.<sup>20</sup> The *Draft Order* would set a compliance date after the expiration of the window for submitting registration data for enterprise and public phones to the URD, allowing the database administrators and Commission to "determine[] . . . that the per-call query process is fully function and will not result in unnecessary blocking of calls."<sup>21</sup> Sorenson does not object to the rule change, but the Commission, before enforcing the rule, must provide sufficient time to resolve existing bugs, test the systems *after* the enterprise and public videophone registrations are in the URD, and allow the new and old systems to run in parallel for 90 days after any last corrections are made by the URD or ACQ administrators, better ensuring that bugs and data problems will not cause valid calls to be blocked.

At present, the ACQ process continues to have technical bugs and faulty routing information, which would under this rule contribute to the unnecessary blocking of valid VRS calls. In the past few months alone, Sorenson has discovered several technical issues in the current ACQ system that cause the system to return errors for compensable VRS calls. A common example is the response that the "iTRS [TRS Numbering Directory] & URD Owner does not match." ACQ provides this response when the TRS Numbering Directory and URD databases do not agree on which provider controls the telephone number. This mismatch can

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<sup>20</sup> See *Draft Order* ¶ 20.

<sup>21</sup> *Id.* ¶ 21. The *Draft Order* describes the time period for submitting public and enterprise videophone registration data as 90 days in paragraph 21 and as 120 days in paragraph 29. The Commission should clarify that VRS providers will have 120 days to submit these data.

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occur during the normal porting process when one database may lag behind the other in terms of updating the provider to which the number is assigned.

After any technical problems have been fully repaired, the Commission should allow, at minimum, a 90-day period in which the current and new call validation systems run in parallel, so that any new bugs can be identified and resolved. To minimize disruptions to consumers, the Commission must defer enforcement of the ACQ rule until the systems are proven to be fully functional and reliable.

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Please be in touch with the undersigned if you have any questions.

Sincerely,



John T. Nakahata

Julie A. Veach

*Counsel to Sorenson Communications, LLC*

cc: Michael Carowitz  
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## **Attachment A**

## **RECOMMENDED MODIFICATIONS AND CLARIFICATIONS TO DRAFT VRS ORDER**

### Enterprise/Public Phones

¶ 23 – Revise first sentence to include videophones “used by ASL-fluent hearing individuals.

Rationale: The draft omits hearing phones, which most commonly will be enterprise phones.

¶ 26 – Include in list of required data “whether the phone is assigned to an ASL-fluent hearing individual.”

Rationale: See above.

¶ 27 – Instead of requiring the entity’s signed certification to include “a statement from the responsible individual that he or she will make reasonable efforts to ensure that only registered VRS users are permitted to use the phone for VRS calls,” change to include “a statement from the responsible individual that he or she will make reasonable efforts to ensure that only **persons with a hearing or speech disability** are permitted to use the phone for VRS calls.” Conforming change, strike the last sentence of n. 93.

Rationale: This mirrors the fundamental VRS eligibility requirement as reflected in the self-certification of eligibility. Some eligible users will not be Registered Users (e.g. family members of a Registered User).

n. 94 – Clarify that the “Compliance Classification” in column 1 of Sorenson’s ex parte attachment is sufficient to meet the requirement to identify “the specific type of area where the video phone is place.” (¶27) Location should only be required for phones not assigned to specific Deaf or hearing individuals.

Rationale: More specific information is highly burdensome and unlikely to be helpful in determining whether there is ineligible use. Also, there is no evidence of ineligible use being a significant problem for VRS, which requires ASL.

¶ 30 – Strike monitoring requirement and note 104.

Rationale: The examples given are unworkable. Providers do not have data on operating hours. Many phones will have spikes (e.g., hospital only when occupied by a Deaf person, conference centers, schools, episodic projects). No direction on variation sensitivity that triggers reporting. We recommend moving this to the FNPRM.

### Direct Video Calling

¶ 18 – Single Unified Customer Support Number – Move to the FNPRM, and seek comment on what changes are needed to the TRS Numbering Directory, ACQ, URD and any other systems to allow for consumers to be able to choose between direct video and VRS when calling a single

unified customer support number. In addition, Rolka will need to update CDR instructions on how to report VRS calls involving single unified customer support numbers. Alternatively, make this effective 180 days after the Bureau issues a Public Notice declaring that all changes have been made to the TRS Numbering Directory, ACQ and the URD, and that those changes have been fully tested and published to providers. Placement of single unified customer support numbers would not be permitted until a further order or, in the alternative, such as 180 days after such a Public Notice.

Rationale: There is currently no way for a VRS provider to know when it should be offering the choice between direct video and VRS, rather than routing to point-to-point when the number is in the TRS Numbering Directory. Without this and other changes to ACQ and URD, putting the single unified customer support number in the TRS Numbering Directory will preclude use of VRS without first placing a direct video call, contrary to the objective of the paragraph, and also falsely flag the VRS call as noncompensable.

¶ 19 – Transfers from Direct Video to VRS – Move to the FNPRM and seek comment on what, if any, changes to standards are necessary to implement the conversion of direct video calls to VRS during a call, including for different types of transfers (e.g., cold, tepid, warm, hot). In addition, Rolka will need to update CDR instructions on how to report VRS calls involving transfers. Alternatively, make this effective 180 days after the Bureau issues a Public Notice declaring that all changes have been made to the US VRS Provider Profile, TRS Numbering Directory, ACQ and the URD, and that those changes have been fully tested.

Rationale: The SIP transfer procedure referenced in ¶ 19 of the Draft Order does not cover all needed steps and information to complete the full range of transfers. Rolka also needs to make changes, which will need to be defined.

¶19 – Transfers from Direct Video to VRS – Make clear that the DVC provider is required to honor the consumer’s choice of VRS provider when transferring a call to VRS.

Rationale: Consumer chooses VRS provider, not DVC.

#### All Call Query

¶ 21 – Recommend: A compliance date for the per-call validation requirement will be set by public notice, which will be issued at least **90 days after** the expiration of the 120-day window for submission of enterprise and public videophone registration data to the Database.<sup>22</sup> State that there will be 3 months of parallel operation after the last bugs are fixed.

Rationale: This will allow at least 3 months of parallel operation in quiet production once the ACQ is fully debugged, following the 120-day submission period for enterprise/public phones.

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<sup>22</sup> There is also a typo in ¶ 21. To match ¶ 29, “90 days” should be “120 days.”

## Non-Service Related Inducements

¶ 34 – Clarify whether and under what circumstances tablets, laptops and devices such as NVIDIA SHIELD are “service-rated” or “non-service related.”

¶ 34 – Clarify when any rulings regarding whether a device is service-related or practice includes permissible selection will become public. Suggest upon offerings becoming public (i.e., disclosed to users). Also, set a 30-day shot clock for a decision by CGB.

¶ 35 – Should be stricken. Instead, the Bureaus should develop reasonable guidelines that balance fund protection against legitimate needs to be able to test new products and to engage in permissible retention and porting marketing.

### Rationale:

- Premise that selectively providing equipment based in part on usage always stimulates usage is overbroad and incorrect. That will depend upon what is considered, and how disclosed.
- Historical usage is an indication of an individual’s need for VRS. Service and product improvements necessarily focus on addressing consumers’ needs.
- Additional equipment may be needed due to factors other than disability (e.g., need for mobility).
- New products need to be tested, which requires users that will use the product and features intensively. Betas won’t work if many users are light or episodic users.
- First sentence’s assertion that current rules preclude selecting users based on historical or expected usage contradicts ¶ 33, which says new rule is needed to address porting situations.
- Guidance is needed as to what retention marketing is permissible. Retention marketing necessarily focuses on customers that have ported or are likely to port, not on all users. Those are more likely to be individuals with more intensive need for VRS.
- Last sentence is overbroad and encompasses selection that could have no possible relation to usage, such as random selection.

## **Attachment B**



## RECOMMENDED SUBSTITUTION FOR ¶ 35 OF DRAFT VRS ORDER — RULES FOR THE PROVISION OF NO OR REDUCED CHARGED EQUIPMENT

¶ 35 is overbroad and does not provide meaningful guidance as to how providers can market service and necessary equipment in a competitive market. To replace ¶ 35 with actionable and enforceable guidance, the Commission could adopt or reiterate the following rules:

- The offer or possession of no or reduced charge equipment<sup>i</sup> cannot be tied to maintaining any level of VRS usage, or to placing any amount of additional VRS calls.<sup>ii</sup>
- The offer or possession of no or reduced charge equipment cannot be tied to remaining a default user of the VRS provider offering or providing that equipment, or having been a default user for a specified period (e.g., you can have another piece of equipment if you remain a default user for another three or six months).<sup>iii</sup>
- A VRS provider cannot require return of no or reduced charge equipment if the user ceases to be a default user.<sup>iv</sup>
- A VRS provider cannot condition the offer or possession of no or reduced charge equipment on a user porting specific numbers specified by the VRS provider (as distinguished from numbers freely chosen by the user).
- A VRS provider cannot request proof or documentation of a user's VRS call history as a condition of offering or providing no or reduced charge equipment.
- When a VRS provider offers a user no or reduced charge equipment, that equipment must be reasonably related to the user's need for and ability to communicate using VRS, or, in the case of product testing, the provider's need to evaluate the features or functions being tested.

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<sup>i</sup> We use equipment here, but the same could also be applied to credits towards a subsidy for a user's internet access costs. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd. 1466, 1466-67 ¶ 1 (Cons. & Gov't Affs. Bur. 2005) (holding "that any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS Call . . . is inconsistent with Section 225 of the Communications Act of 1934 and the TRS regulations") (footnote omitted); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 20 FCC Rcd. 12,503, 12,503 ¶ 1, 12,505 ¶ 5 (Cons. & Gov't Affs. Bur. 2005) (finding that a financial reward in the form of "free or heavily discounted long distance service" incentivizes users to make "more or longer calls" using TRS than they otherwise would in violation of Section 225).

<sup>ii</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20140, 20175 ¶ 94 (2007) ("Providers that give consumers relay equipment cannot condition

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the ongoing use or possession of the equipment, or the receipt of different or upgraded equipment, on the consumer making relay calls through its service or the service of any other provider. In other words, providers cannot give consumers equipment as part of outreach efforts or for other purposes, and then require that the equipment be relinquished if the consumer fails to maintain a certain call volume.”).

iii *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 810 ¶ 38 (2008) (requiring providers to make clear in consumer education and outreach materials that “the provider cannot condition the ongoing use or possession of equipment or the receipt of different or upgraded equipment on the consumer continuing to use the provider as its default provider”) (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 11,591, 11,622 ¶¶ 87-90 (2008)).

iv *See id.*

## **Attachment C**

## Proposed Customer Classification Table

Compliance Classification	Customer	Information Submitted to URD	Other Information Voluntarily Collected	Certifications	Who Signs Certifications	VRS Calls Allowed	URD Impacts / iTRS / Billing
Individual Standard	Deaf individual and Deaf household	Individual's Name, Address, DOB, 4SSN/4TIN		Individual Self-Certification, URD Consent	Individual user	Yes	Registered with URDID Registered with TRS Numbering Directory Compensable with URDID
Individual Non-Citizen (589 user)	Deaf individual and Deaf household without SSN or TIN	Individual's Name, Address, DOB, plus residential and identity documents required by URD		Individual Self-Certification, URD Consent	Individual user	Yes	Registered with URDID (as 589 user) Registered with TRS Numbering Directory Compensable with URDID
Individual Minor	Deaf minor (under 18 years old)	Guardian's Name, Address, DOB, 4SSN/4TIN. Minor's DOB	Minor application with guardian consent; minor's name, address, 4SSN	Individual Self-Certification URD Consent	Guardian	Yes	Registered with URDID Registered with TRS Numbering Directory Compensable with URDID
Individual Hearing	Hearing individual knowing ASL	Individual's Name, Address, DOB		Hearing Self-Certification, URD Consent	Individual user	P2P Calls Only	Registered with URDID (as hearing) Registered with TRS Numbering Directory Never compensable
Entity Deaf Assigned	Entity, who assigns number to a Deaf staff member (e.g., professor at deaf university)	Entity's name, Address, Contact Name, Contact Phone Number	Name of staff member assigned	Entity Deaf-Assigned Self-Certification URD Consent Quarterly entity & user verification	Individual assigned to use the phone	Yes	Registered with URDID Registered with TRS Numbering Directory Compensable with URDID
Entity Hearing Assigned	Entity, who assigns number to an ASL-fluent staff member	Entity's name, Address, Contact Name, Contact Phone Number	Name of staff member assigned to phone	Hearing Self-Certification URD Consent Quarterly entity and user verification	Individual assigned to use the phone	P2P Calls Only	Registered with URDID (as hearing device) Registered with TRS Numbering Directory Never compensable
Entity Public	Entity, who assigns phone to public area e.g. airport terminal, lobby at a hospital	Entity's name, Address, Contact Name, Contact Phone Number	Name of location	Public-Phone Self-Certification before each VRS call.  (No self-certification required for point-to-point calls.)	User placing VRS call.	Yes (with per-call self-certification)	Registered with URDID Registered with TRS Numbering Directory Compensable with URDID & per call self-certification
Entity Supervised Deaf-Use	Entity, who assigns number to a location with supervision (e.g., front desk in an administration office at a university)	Entity's name, Address, Contact Name, Contact Phone Number	Name of location,  Name of person supervising phone	Entity Supervised Self-Certification  Quarterly entity & location verification	Individual assigned to supervise use of the phone	Yes	Registered with URDID (as device) Registered with TRS Numbering Directory Compensable with URDID
Entity Mixed-Use (proposed new mode)	Entity, who assigns number to an ASL-fluent counselor who provides services for Deaf individuals e.g. vocational counselor at a state-sponsored institution	Entity's name, Address, Contact Name, Contact Phone Number	Name of location	Entity Mixed-Use Self-Certification Before Each VRS Call or SignMail retrieval	User placing VRS call.	Yes (with per-call self-certification)	Registered with URDID (as device) Registered with TRS Numbering Directory Compensable with URDID & per call self-certification

Entity includes government agencies, businesses, schools, deaf service organizations, non-profits, and other similarly formally organized groups. Phone numbers (and their associated accounts) are the property of the Entity. Numbers are ported and data updated at the direction of the entity.